



# House of Representatives

## **File No. 615**

General Assembly

February Session, 2002

**(Reprint of File No. 291)**

Substitute House Bill No. 5539  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
May 3, 2002

### **AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2002*) The General Assembly finds  
2       that mercury is a persistent and toxic pollutant that bioaccumulates in  
3       the environment, and that in order to create and maintain a healthful  
4       environment and protect public health, the virtual elimination of the  
5       discharge of anthropogenic mercury should be pursued.

6       Sec. 2. (NEW) (*Effective July 1, 2002*) As used in sections 1 to 14,  
7       inclusive, of this act:

8       (1) "Mercury" means elemental mercury and mercury compounds;

9       (2) "Mercury-added product" means a product, commodity,  
10      chemical or component of a product that contains mercury or a  
11      mercury compound that is intentionally added for any reason.  
12      "Mercury-added product" includes, but is not limited to, formulated  
13      mercury-added products and fabricated mercury-added products.  
14      "Mercury-added product" does not include any packaging component,

15 as defined in subdivision (3) of section 22a-255h of the general statutes;

16 (3) "Formulated mercury-added product" means a mercury-added  
17 product that is sold as a consistent mixture of chemicals, including, but  
18 not limited to, laboratory chemicals, materials used for cleaning,  
19 maintenance or disinfection, cosmetics, pharmaceuticals, coating  
20 materials, acids, alkalites, bleach, pharmaceutical products, stains,  
21 reagents, preservatives, fixatives, buffers and dyes;

22 (4) "Fabricated mercury-added product" means a mercury-added  
23 product that consists of a combination of individual components that  
24 combine to make a single unit, including, but not limited to, mercury-  
25 added measuring devices, lamps and switches;

26 (5) "Mercury fever thermometer" means a mercury-added product  
27 that is used for measuring body temperature, but does not mean a  
28 digital thermometer that includes a removable button cell battery  
29 containing mercury;

30 (6) "Mercury-added novelty" means a mercury-added product  
31 intended mainly for personal or household enjoyment or adornment,  
32 including, but not limited to, products intended for use as practical  
33 jokes, figurines, adornments, toys, games, cards, ornaments, yard  
34 statutes and figures, candles, jewelry, holiday decorations, footwear,  
35 other items of apparel or similar products. A product is not a  
36 "mercury-added novelty" solely on the basis that it includes a  
37 removable button cell battery containing mercury;

38 (7) "Manufacturer" means any person that (A) produces a mercury-  
39 added product, or (B) serves as an importer or domestic distributor of  
40 a mercury-added product produced outside the United States. In the  
41 case of a multi-component product, "manufacturer" means the last  
42 manufacturer to produce or assemble the product, unless the multi-  
43 component mercury-added product is produced outside the United  
44 States, in which case "manufacturer" means the importer or domestic  
45 distributor;

46 (8) "Person" means any individual, organization, partnership, joint  
47 venture, association, firm, limited liability company, corporation or  
48 other entity, and includes a municipality, the federal government, the  
49 state or any instrumentality of the state, or other governmental entity  
50 and any officer or governing or managing body of any partnership,  
51 association, firm or corporation or any member or manager of a  
52 limited liability company;

53 (9) "Vehicle" means any device capable of being moved upon a  
54 public highway and any device in, upon or by which any person or  
55 property is or may be transported or drawn upon a public highway,  
56 but does not include devices moved by human or animal power or  
57 used exclusively upon stationary rails or tracks;

58 (10) "Scrap metal" means used or discarded items that consist  
59 predominantly of ferrous metals, aluminum, brass, copper, lead,  
60 chromium, tin, nickel or alloys;

61 (11) "Solid waste" means unwanted or discarded solid, liquid,  
62 semisolid or contained gaseous material, including, but not limited to,  
63 demolition debris, material burned or otherwise processed at a  
64 resources recovery facility or incinerator, material processed at a  
65 recycling facility, sludges or other residue from a water pollution  
66 abatement facility, water supply treatment plan or air pollution control  
67 facility;

68 (12) "Commissioner" means the Commissioner of Environmental  
69 Protection.

70 Sec. 3. (NEW) (*Effective July 1, 2002*) The commissioner shall  
71 participate in the regional, multi-state clearinghouse to assist in  
72 carrying out the requirements set forth in sections 1 to 14, inclusive, of  
73 this act to act as the designated agent of the clearinghouse for the  
74 purposes of receiving notifications and submissions of information as  
75 required by this act and to help coordinate reviews of the  
76 manufacturers' notifications regarding mercury-added products,  
77 applications for phase-out exemptions, collection system plans,

78 disclosures of mercury-added content, applications for alternative  
79 labeling or notification systems or both, education and outreach  
80 activities, and any other functions related to sections 1 to 14, inclusive,  
81 of this act.

82       Sec. 4. (NEW) (*Effective July 1, 2002*) (a) On and after January 1, 2003,  
83 no person shall offer any mercury-added product for sale or distribute  
84 for promotional purposes in this state unless the manufacturer or its  
85 designated industrial trade group gives prior notification in writing to  
86 the commissioner or the regional, multi-state clearinghouse described  
87 in section 3 of this act as provided in this section. Such notification, in a  
88 form prescribed by the commissioner, shall at a minimum include (1) a  
89 brief description of the product or category of products to be offered  
90 for sale or distributed; (2) an identification of each product by its  
91 mercury content in one of the following ranges: Less than zero to five  
92 milligrams, greater than five milligrams to ten milligrams, greater than  
93 ten milligrams to fifty milligrams, greater than fifty milligrams to one  
94 hundred milligrams, greater than one hundred milligrams to one  
95 thousand milligrams and greater than one thousand milligrams; (3) the  
96 actual total amount of mercury in each product; and (4) the name and  
97 address of the manufacturer and the position, address and phone  
98 number of a contact person at the manufacturer. The manufacturer or  
99 its designated industrial trade group shall revise the information in the  
100 notification whenever there is significant change in the information or  
101 when requested by the commissioner or the regional, multi-state  
102 clearinghouse.

103       (b) Any mercury-added product for which federal law preempts  
104 state authority over notice requirements is exempt from the  
105 requirements of this section.

106       (c) With the approval of the commissioner, the manufacturer or its  
107 designated industrial trade group may supply the information  
108 required in subdivisions (1) to (3), inclusive, of subsection (a) of this  
109 section for a product category rather than an individual product.

110 (d) Public disclosure of trade secrets submitted to the commissioner  
111 pursuant to this section shall be governed by the provisions of chapter  
112 14 of the general statutes. Notwithstanding the provisions of said  
113 chapter 14, the commissioner may provide the regional, multi-state  
114 clearinghouse described in section 3 of this act with copies of such  
115 information and the commissioner, in consultation with the  
116 clearinghouse, may compile or publish analyses or summaries of such  
117 information, provided the analyses or summaries do not identify any  
118 manufacturer or reveal any confidential information.

119 Sec. 5. (NEW) (*Effective July 1, 2002*) (a) Notwithstanding the  
120 provisions of section 6 of this act, on and after July 1, 2003, no person  
121 shall offer for sale or distribute for promotional purposes in the state  
122 any mercury-added novelty. A manufacturer that produces or sells  
123 mercury-added novelties shall notify retailers that sell mercury-added  
124 novelties about such product ban and inform such retailers of how to  
125 dispose of the remaining inventory in accordance with the hazardous  
126 waste provisions of title 22a of the general statutes.

127 (b) Notwithstanding the provisions of section 6 of this act, on and  
128 after January 1, 2003, no person shall offer for sale or distribute for  
129 promotional purposes mercury fever thermometers except by  
130 prescription written by a physician. A manufacturer of mercury fever  
131 thermometers shall provide the buyer or the recipient with notice of  
132 mercury content, instructions on proper disposal and instructions that  
133 clearly describe how to carefully handle the thermometer to avoid  
134 breakage and on proper cleanup should a breakage occur.

135 (c) Notwithstanding the provisions of section 6 of this act, on and  
136 after July 1, 2003, no person shall offer for sale or distribute for  
137 promotional purposes mercury dairy manometers. A manufacturer  
138 that produces or sells mercury dairy manometers shall notify retailers  
139 about the provisions of this subsection and how to dispose of the  
140 remaining inventory properly in accordance with title 22a of the  
141 general statutes. The Commissioner of Environmental Protection, in  
142 consultation with the Commissioner of Agriculture, shall examine the

143 feasibility of implementing a collection and replacement program for  
144 dairy manometers, and shall implement such a program within  
145 available appropriations.

146 (d) On and after July 1, 2003, no vocational dental education or  
147 training school shall use mercury amalgam unless such school has  
148 developed and implemented a plan approved by the commissioner  
149 that assures best management practices are used to prevent discharge  
150 of mercury into the waters of the state, any pollution abatement facility  
151 or subsurface sewage disposal system, and to properly handle and  
152 recycle or dispose of waste elemental mercury and amalgam. Such  
153 plan shall provide for an education program for students regarding the  
154 hazards of mercury and best management practices.

155 Sec. 6. (NEW) (*Effective July 1, 2002*) (a) Except as provided in section  
156 7 of this act, except for products that contain a mercury-containing  
157 lamp used for backlighting that cannot feasibly be removed by the  
158 purchaser and except for specialized lighting used in the entertainment  
159 industry such as metal halide lights, no person shall offer for sale or  
160 distribute for promotional purposes any mercury-added product if: (1)  
161 After July 1, 2004, the mercury content of the product exceeds one  
162 gram in the case of fabricated mercury-added products or two  
163 hundred fifty parts per million in the case of formulated mercury-  
164 added products; and (2) on and after July 1, 2006, the mercury content  
165 of the product exceeds one hundred milligrams in the case of  
166 fabricated mercury-added products or fifty parts per million in the  
167 case of formulated mercury-added products.

168 (b) Not later than July 1, 2003, the commissioner shall convene a  
169 working group which shall include, but not be limited to, government  
170 representatives from other northeastern states to evaluate advances in  
171 technology and make recommendations regarding the regulation of  
172 mercury-added products that have a mercury content in excess of ten  
173 milligrams or ten parts per million but less than one hundred  
174 milligrams or fifty parts per million and specialized lighting used in  
175 the entertainment industry such as metal halide lights. Within such

176 working group, the commissioner shall convene a subgroup which  
177 shall include, but not be limited to, industry trade groups for mercury-  
178 containing lamps to develop a plan in accordance with section 9 of this  
179 act to provide for the collection of such lamps. The working group  
180 shall finalize such recommendations not later than July 1, 2004.

181 (c) In the case of a product that contains one or more mercury-  
182 added products as a component, the phase-out limits specified in  
183 subsection (a) of this section apply to each component part or parts  
184 and not to the entire product.

185 Sec. 7. (NEW) (*Effective July 1, 2002*) (a) The commissioner shall  
186 exempt a mercury-added product from the limits on total mercury  
187 content set forth in subsection (a) of section 6 of this act if the level of  
188 mercury or mercury compounds contained in the product are  
189 necessary to comply with federal or state health or safety  
190 requirements. In order to obtain such exemption, the manufacturer  
191 shall provide the commissioner and notify the regional, multi-state  
192 clearinghouse described in section 3 of this act with information that  
193 demonstrates such necessity.

194 (b) A manufacturer of a mercury-added product or category of  
195 products may apply to the commissioner and notify the clearinghouse  
196 for a modified or conditional exemption from the limits on total  
197 mercury content set forth in subsection (a) of section 6 of this act  
198 provided such exemption shall be for not more than four years.

199 (c) The manufacturer shall apply for a modified or conditional  
200 exemption (1) not later than one year before the effective date of the  
201 limit for which the exemption is being requested in the case of an  
202 existing product or category of products, or (2) prior to the sale or  
203 distribution in the case of promotional purposes of a new product or  
204 category of products.

205 (d) An application for a modified or conditional exemption shall (1)  
206 document the basis for the requested exemption or renewal of  
207 exemption, and (2) describe how the manufacturer will ensure that a

208 system exists for the proper collection, transportation and processing  
209 of the product or products at the end of their useful life.

210 (e) In determining whether to grant a modified or conditional  
211 exemption for a product or category of products the commissioner  
212 shall consider (1) whether a system exists for the proper collection,  
213 transportation and processing of the mercury-added product,  
214 including, but not limited to, a system for the direct return of a waste  
215 product to the manufacturer or a collection and recycling system that  
216 is supported by an industry or trade group, or other similar private or  
217 public sector efforts, and (2) whether each of the following criteria is  
218 met: (A) Use of the product is beneficial to the environment or  
219 protective of public health or protective of public safety; (B) there is no  
220 technically feasible alternative to the use of mercury in the product; (C)  
221 there is no comparable product, other than a mercury-added product,  
222 available at reasonable cost; and (D) with respect to a renewal of an  
223 exemption, reasonable efforts have been made to remove mercury  
224 from the product.

225 (f) Prior to issuing a modified or conditional exemption, the  
226 commissioner shall consult with the clearinghouse, states, Canadian  
227 provinces and regional governmental organizations to promote  
228 consistency in the implementation of this section.

229 (g) The commissioner may renew, for a period of not longer than  
230 four years, a modified or conditional exemption one or more times if  
231 (1) the manufacturer applies for the renewal, and (2) the commissioner  
232 finds that the manufacturer meets the requirements for such  
233 exemption and that the manufacturer has complied with all the  
234 conditions of the original approval.

235 Sec. 8. (NEW) (*Effective July 1, 2002*) (a) Except as provided in  
236 subsection (g) of this section, on and after July 1, 2004, no person shall  
237 offer for sale or distribute for promotional purposes any mercury-  
238 added product unless both the product and either its packaging or care  
239 and use manual are labeled in accordance with this section, any



240 regulations adopted under this section or the terms of any approved  
241 alternative labeling or notification granted under subsection (h) of this  
242 section. A retailer shall not be found in violation of this subsection if  
243 the retailer lacked knowledge that the product contained mercury.

244 (b) Except as provided in subsection (g) of this section, if a mercury-  
245 added product is a component of another product, the product  
246 containing the component and the component shall both be labeled as  
247 provided in this section, provided such component may feasibly be  
248 removed from the product by the purchaser. The label on a product  
249 containing a mercury-added component that can be feasibly removed  
250 shall identify the component with sufficient detail so that the  
251 component may be readily located for removal.

252 (c) All labels contained on packaging shall be clearly visible prior to  
253 sale and all labels required on the product packaging or in the care and  
254 use manual shall be sufficient to inform the purchaser, using words or  
255 symbols, that mercury is present in the product and that the product  
256 should be properly disposed of or recycled in accordance with the  
257 hazardous waste provisions of title 22a of the general statutes.

258 (d) Labels affixed to the product shall be constructed of materials  
259 that are sufficiently durable to remain legible for the useful life of the  
260 product.

261 (e) On and after July 1, 2004, any person offering a mercury-added  
262 product for sale through a catalog, or distributing such product for  
263 promotional purposes shall clearly advise in writing the purchaser or  
264 recipient prior to the time of sale or distribution that the product  
265 contains mercury. On and after July 1, 2004, any person offering a  
266 mercury-added product for sale by telephone shall clearly advise the  
267 purchaser or recipient prior to the time of sale that the product  
268 contains mercury. Such requirements shall apply to such transactions  
269 in which the purchaser or recipient is unable to view the labels on the  
270 package or the product prior to purchase or receipt.

271 (f) The manufacturer of a product shall be responsible for product

272 and package labels required under this section, unless the wholesaler  
273 or retailer agrees in writing to accept the responsibility of  
274 implementing an alternative to the labeling requirements of this  
275 section provided such alternative is approved under subsection (h) of  
276 this section.

277 (g) (1) Manufacturers shall meet all the requirements of this section  
278 for large appliances, including, but not limited to, washers, dryers,  
279 ovens, including microwave ovens, refrigerators, air conditioners,  
280 dehumidifiers or portable heaters sold in a store where such appliance  
281 is on display, except that no package labeling shall be required; (2)  
282 manufacturers shall meet all the requirements of this section for  
283 mercury fever thermometers, except that no product labeling shall be  
284 required; (3) in the case of vehicles, (A) manufacturers shall meet the  
285 product labeling requirements of this section for vehicles by placing a  
286 label on the doorpost of the vehicles that lists the mercury-added  
287 components that may be present in the vehicle, and (B) manufacturers  
288 shall not be required to label the mercury-added components of the  
289 vehicle; (4) manufacturers of products that contain a mercury-  
290 containing lamp used for backlighting that cannot feasibly be removed  
291 by the purchaser shall meet the product labeling requirements of this  
292 section by placing the label on the product or its care and use manual;  
293 (5) manufacturers shall meet all the requirements of this section for  
294 button cell batteries containing mercury, except that no labeling shall  
295 be required; (6) in the case of products that contain button cell batteries  
296 containing mercury as the only mercury components, manufacturers  
297 shall meet the packaging requirements of this section by including a  
298 label in the product instructions, if any, and on the packaging, and no  
299 further product labeling shall be required; (7) manufacturers of  
300 fluorescent lights shall meet the labeling requirements of this section  
301 by labeling the product packaging; and (8) manufacturers of medical  
302 equipment not intended for use by nonmedical personnel are exempt  
303 from this section.

304 (h) (1) A manufacturer may apply to the commissioner and the  
305 regional, multi-state clearinghouse described in section 3 of this act for

306 an alternative to the requirements of subsections (a) to (g), inclusive, of  
307 this section if: (A) Compliance with the requirements is not feasible; (B)  
308 the proposed alternative would be at least as effective in providing  
309 presale notification of mercury content and in providing instructions  
310 on proper disposal; or (C) federal law preempts state authority over  
311 labeling.

312 (2) The commissioner may approve, deny, modify or condition a  
313 request for an alternative to the requirements of subsections (a) to (g),  
314 inclusive, of this section. An approval shall be for a period of no more  
315 than two years and may, upon continued eligibility under the criteria  
316 of this section and compliance with the conditions of its prior  
317 approval, be renewed. Requests for renewals shall be submitted ninety  
318 days before the expiration of the approval. Prior to approving an  
319 alternative, the commissioner shall consult with states, Canadian  
320 provinces and regional government organizations to insure that the  
321 commissioner's labeling requirements are consistent with those of  
322 other jurisdictions in the region. The commissioner may revoke an  
323 approval for cause.

324 (i) Notwithstanding the provisions of this section, a person who  
325 sells mercury-added lamps to the owner or manager of any industrial,  
326 commercial or office building or to any person who replaces or  
327 removes from service outdoor lamps that contain mercury shall clearly  
328 inform the purchaser in writing on the invoice for the lamps or in a  
329 separate document that the lamps contain mercury, a hazardous  
330 substance that is regulated by federal and state law, and that they may  
331 not be placed in the solid waste destined for disposal. Retail  
332 establishments that incidentally sell mercury-added lamps to  
333 purchasers are exempt from the requirements of this subsection. A  
334 person who contracts with the owner or manager of an industrial,  
335 commercial or office building or with a person responsible for outdoor  
336 lighting to remove from service mercury-added lamps shall clearly  
337 inform in writing the person for whom the work is being done that the  
338 lamps being removed from service contain mercury and what the  
339 contractor's arrangements are for the management of the mercury in

340 the removed lamps.

341 Sec. 9. (NEW) (*Effective July 1, 2002*) (a) On and after July 1, 2003, no  
342 person shall offer any mercury-added product for sale or distribute  
343 any such product for promotional purposes unless the manufacturer  
344 either on its own or in concert with other persons has submitted a plan  
345 to the commissioner for a system that reasonably enables the collection  
346 of such products. If a mercury-added product is a component of  
347 another product, the collection system shall provide for removal and  
348 collection of the mercury-added component or collection of both the  
349 mercury-added component and the product containing it.

350 (b) The collection system shall include (1) a public education  
351 program to inform the public about the purpose of the collection  
352 program and how to participate in it; (2) a targeted capture rate for the  
353 mercury-added product or component; (3) a plan for implementing  
354 and financing the collection system; (4) documentation of the  
355 willingness of all parties to the system to implement the proposed  
356 collection system; (5) a description of the performance measures to be  
357 utilized and reported by the manufacturer to demonstrate that the  
358 collection system is meeting capture rate targets; (6) a description of  
359 additional or alternative actions that will be implemented to improve  
360 the collection system and its operation in the event that the program  
361 targets are not met; and (7) a recycling or disposal plan.

362 (c) Not later than July 1, 2004, and biennially thereafter, the  
363 manufacturer or entity that submitted the plan on behalf of the  
364 manufacturer shall submit a report to the commissioner and to the  
365 regional, multi-state clearinghouse described in section 3 of this act on  
366 the effectiveness of the collection system. The report shall include an  
367 estimate of the amount of mercury that was collected, the capture rate  
368 for the mercury-added products or components, the results of the  
369 other performance measures included in the manufacturer's collection  
370 system plan, and such other information as the commissioner may  
371 require. The commissioner shall make such reports available to the  
372 public.

373 (d) The cost for the collection system shall not be borne by state or  
374 local government.

375 (e) The commissioner shall review any impediments identified  
376 pursuant to subdivision (7) of subsection (b) of this section and the  
377 regulations adopted under title 22a of the general statutes governing  
378 handling of waste from mercury-added products and, if necessary,  
379 may amend regulations as appropriate to facilitate collection.

380 (f) The following are exempt from the provisions of this section: (1)  
381 Formulated mercury-added products intended to be consumed in use,  
382 including, but not limited to, reagents, cosmetics, pharmaceuticals and  
383 other laboratory chemicals; (2) fabricated mercury-containing products  
384 where the only mercury is contained in a component that cannot  
385 feasibly be removed by the purchaser including, but not limited to,  
386 electronic products whose only mercury-added component is a  
387 mercury-containing lamp used for backlighting provided such  
388 manufacturer or trade association maintains a web-based service to  
389 provide information on recycling and safe disposal of such products;  
390 (3) photographic film and paper; (4) a manufacturer or trade  
391 association of mercury-containing lamps that maintain a toll-free  
392 telephone number and an Internet-based service to provide  
393 information on recycling and safe disposal of such lamps and directs  
394 consumers to such telephone number and service on any statutorily-  
395 required package label; and (5) any other product for which the  
396 commissioner determines a collection plan is not feasible.

397 Sec. 10. (NEW) (*Effective July 1, 2002*) Except as provided in section  
398 11 of this act, no person shall offer for sale or distribute for  
399 promotional purposes or provide elemental mercury without  
400 providing a Material Safety Data Sheet, as defined in 42 USC 11049. On  
401 and after July 1, 2003, the seller, distributor or provider shall require  
402 the purchaser or recipient at the time of receipt of any elemental  
403 mercury to sign a statement that the purchaser or recipient (1) will use  
404 the mercury only for medical, research or manufacturing purposes; (2)  
405 understands that mercury is toxic and that the purchaser will store, use

406 and otherwise handle exposure to such mercury in accordance with  
407 state and federal law; and (3) will dispose of the elemental mercury in  
408 accordance with state and federal law.

409 Sec. 11. (NEW) (*Effective July 1, 2002*) No person shall offer for sale,  
410 distribute for promotional purposes or provide elemental mercury to a  
411 dental practitioner without providing a Material Safety Data Sheet, as  
412 defined in 42 USC 11049. On and after July 1, 2003, such dental  
413 practitioner shall (1) use the mercury only for dental purposes; (2)  
414 store, use and otherwise handle exposure to such mercury in  
415 accordance with the accepted guidelines of the American Dental  
416 Association, state and federal law and any applicable best  
417 management practices adopted by the state; and (3) dispose of the  
418 elemental mercury in accordance with state and federal law.

419 Sec. 12. (NEW) (*Effective July 1, 2002*) (a) Mercury-added products  
420 with a code or date of manufacture indicating they were manufactured  
421 prior to January 1, 2003, or mercury-added products for which the  
422 manufacturer provides documentation that the product was  
423 manufactured prior to January 1, 2003, shall be exempt from section 4  
424 of this act, except that motor vehicles with a code or date of  
425 manufacture prior to October 1, 2003, or motor vehicles for which the  
426 manufacturer provides documentation that the product was  
427 manufactured prior to October 1, 2003, shall be exempt from such  
428 sections.

429 (b) Mercury-added products with a code or date of manufacture  
430 indicating they were manufactured prior to January 1, 2004, or  
431 mercury-added products for which the manufacturer provides  
432 documentation that the product was manufactured prior to January 1,  
433 2004, shall be exempt from sections 6 and 8 of this act, except that  
434 motor vehicles with a code or date of manufacture prior to October 1,  
435 2003, or motor vehicles for which the manufacturer provides  
436 documentation that the product was manufactured prior to October 1,  
437 2003, shall be exempt from such sections.

438 (c) Mercury-added products with a code or date of manufacture  
439 indicating they were manufactured prior to July 1, 2003, or mercury-  
440 added products for which the manufacturer provides documentation  
441 that the product was manufactured prior to July 1, 2003, shall be  
442 exempt from section 9 of this act, except that motor vehicles with a  
443 code or date of manufacture prior to October 1, 2003, or motor vehicles  
444 for which the manufacturer provides documentation that the product  
445 was manufactured prior to October 1, 2003, shall be exempt from such  
446 sections.

447 Sec. 13. (NEW) (*Effective July 1, 2002*) (a) The commissioner, in  
448 consultation with other state agencies, may implement a  
449 comprehensive program for public education, outreach and assistance  
450 for manufacturers, households, waste generators, local and regional  
451 solid waste management agencies, businesses, health care facilities,  
452 scrap metal processors, recyclers, dismantlers, institutions, schools and  
453 other interested groups. Such program may focus on the hazards of  
454 mercury; the requirements and obligations of individuals,  
455 manufacturers and agencies under sections 1 to 12, inclusive, of this act  
456 and voluntary efforts that individuals, institutions and businesses can  
457 undertake to help further reduce mercury in the environment. The  
458 commissioner, in conjunction with manufacturers of mercury-added  
459 products and other affected businesses, may promote the development  
460 and implementation of such public education and technical assistance  
461 programs.

462 (b) The commissioner may cooperate with other states and  
463 Canadian provinces and regional organizations in developing public  
464 education, outreach and assistance programs.

465 (c) The commissioner may develop an awards program to recognize  
466 the accomplishments of those persons who exceed the minimum  
467 requirements of sections 4 to 12, inclusive, of this act, and who excel at  
468 reducing or eliminating mercury in air emissions or releases.

469 Sec. 14. (NEW) (*Effective July 1, 2002*) The provisions of this act shall

470 not apply to pharmaceuticals, pharmaceutical products, biological  
471 products or any substance that may be lawfully sold over the counter  
472 without a prescription under the federal Food, Drug and Cosmetics  
473 Act, 21 USC 301 et seq. For purposes of this section, "Biological  
474 product" means a virus, therapeutic serum, toxin, antitoxin, vaccine,  
475 blood, blood component or derivative, allergenic product or an  
476 analogous product, or arsphenamine a derivative of arsphenamine or  
477 any other trivalent organic arsenic compound used for the prevention,  
478 treatment or cure of a disease or condition of human beings.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>July 1, 2002</i>
Sec. 3	<i>July 1, 2002</i>
Sec. 4	<i>July 1, 2002</i>
Sec. 5	<i>July 1, 2002</i>
Sec. 6	<i>July 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>
Sec. 8	<i>July 1, 2002</i>
Sec. 9	<i>July 1, 2002</i>
Sec. 10	<i>July 1, 2002</i>
Sec. 11	<i>July 1, 2002</i>
Sec. 12	<i>July 1, 2002</i>
Sec. 13	<i>July 1, 2002</i>
Sec. 14	<i>July 1, 2002</i>



The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
EQ/GF - Cost	Department of Environmental Protection	See Below	See Below
GF - Cost	Department of Agriculture	Minimal	-
GF - Cost	University of Connecticut Health Center	Potential Minimal	Potential Minimal
GF - Cost	Regional Community Technical Colleges	Potential Minimal	Potential Minimal
GF - Cost	Vocational Technical High Schools	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

Additional new activities concerning reducing mercury in the environment will be required of the Department of Environmental Protection (DEP) due to passage of the bill. Ongoing administrative costs for processing notifications, processing exemptions from phase-out requirements, requests for alternative labeling requirements, and the review of collection system plans are anticipated to cost approximately \$20,000 - \$30,000 or divert  $\frac{1}{4}$  to  $\frac{1}{2}$  of an analyst and related expenses from current duties.

Participation in a regional, multi-state clearing house (which is required in the bill) is funded through the DEP's dues to the Northeast Waste Management Officials Association. Currently, \$5,000 of the states dues is targeted for use to maintain the clearing house. The clearing house is anticipated to reduce the on-going receipt and processing of information by the individual states.

Requiring the DEP in consultation with the Department of Agriculture to examine the feasibility of implementing a collection and replacement program for dairy manometers and implementing one, is anticipated to be handled within normal budgetary resources. Information is currently available on this subject and there are less than one dozen left in the State.

Costs would also be incurred for public education and outreach activities by the DEP concerning mercury reduction. A minimal program could be accomplished at a cost of approximately \$25,000. Additional activities would increase costs.

Because mercury is considered a hazardous material and is already heavily regulated, the dental programs in the state currently abide by the applicable regulations related to its use and disposal. Programs exist at the University of Connecticut Health Center, Tunxis Community-Technical College, University of New Haven and the University of Bridgeport. To the extent that existing plans for mercury management do not meet the approval of the commissioner of the Department of Environmental Protection, there may be additional costs. However, it is anticipated that these plans would qualify as "best management practices."

It is expected that dental technician programs within the state's vocational-technical system can comply with the requirements concerning mercury amalgam within currently available resources.

House "A" concerns requirements for dental and dental technician programs and is anticipated to have a minimal impact. The amendment also makes procedural and technical changes which do not change the impact to the state from the underlying bill.

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**OLR Amended Bill Analysis**

sHB 5539 (as amended by House "A")\*

***AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION*****SUMMARY:**

This bill establishes a comprehensive scheme governing the sale, use, distribution, disposal and notification requirements for mercury and many products that contain mercury.

The bill requires manufacturers to notify the Department of Environmental Protection (DEP) commissioner of their products' mercury content and imposes other notice requirements. It restricts the sale of a number of mercury-added products, phasing down their maximum allowable mercury content. It generally bans the sale, starting January 1, 2003, of mercury thermometers, mercury-containing novelties, and other products.

The bill requires the commissioner to participate in and consult with a multi-state clearinghouse and to serve as its designated agent to help coordinate and carry out the bill's requirements.

The bill requires mercury-added products (products to which mercury has been intentionally added) and their packaging to be labeled as to their mercury content. It requires manufacturers of mercury-added products to develop and implement plans for their collection and recycling and report to DEP on the system's effectiveness. The collection requirements do not apply to certain products, including cosmetics and pharmaceuticals meant to be totally consumed during use, and photographic film and paper. The commissioner must review state regulations on the handling of mercury wastes and may, if necessary, amend them to facilitate collection.

The bill's notice requirements take effect January 1, 2003 and apply to mercury-added products manufactured after that date. Its collection requirements take effect July 1, 2003 and apply to mercury-added products manufactured after that date. Its labeling requirement and the first stage of its phase-down requirements take effect July 1, 2004

and apply to mercury-added products manufactured after January 1, 2004.

The bill exempts from its notice, phase-down, labeling, and collection requirements motor vehicles manufactured before October 1, 2003.

It is unclear to what extent the bill applies to pharmaceuticals. The bill defines mercury-added products to include pharmaceuticals, and exempts pharmaceuticals from its collection requirements. However, another section of the bill appears to completely exempt pharmaceuticals from its provisions.

The bill allows the DEP commissioner to implement an education, outreach, and assistance program for households and affected parties and to develop an awards program to recognize those who excel in reducing or eliminating mercury in air emissions.

\*House Amendment "A"

1. exempts certain over-the-counter pharmaceutical products from the bill's provisions;
2. adds provisions pertaining to the sale or distribution of mercury to dental practitioners, and its use by practitioners
3. requires dental schools to use best management practices when handling or disposing of mercury and to teach students about mercury hazards;
4. designates the DEP commissioner as the agent of a regional clearinghouse, and eliminates a requirement that he consider clearinghouse decisions in making determinations under the bill;
5. requires that manufacturers list the total amount of mercury when providing notice to DEP;
6. exempts certain types of specialized lighting from its phase-down requirements;
7. specifies when a working group is to make recommendations concerning the regulation of products containing small amounts of mercury, and creates a subcommittee within that group;
8. specifies the requirements for obtaining certain exemptions from the phase-down requirements, and what the commissioner must consider in deciding whether to grant such exemptions;
9. requires anyone offering mercury-added products for sale by telephone to notify purchasers that the product contains mercury before making the sale;

10. exempts certain medical equipment from labeling requirements;
11. specifies what the commissioner must consider in granting alternatives to the labeling requirements;
12. requires certain sellers of mercury-added lamps to notify certain purchasers of restrictions on the disposal of such lamps;
13. delays by six months the date on which manufacturers must begin submitting reports on their collection plans;
14. extends the period for which mercury-added products are exempt from various of the bill's provisions;
15. exempts motor vehicles manufactured before October 1, 2003 from labeling requirements;
16. eliminates references to e-commerce;
17. expands the list of products exempt from its phase-down requirements;
18. eliminates certain definitions; and
19. makes minor changes.

EFFECTIVE DATE: July 1, 2002

## **REGIONAL CLEARINGHOUSE**

The bill requires the commissioner to participate in a regional, multi-state clearinghouse, to serve as its designated agent for the purpose of receiving notification and submissions of information as the bill requires, and to help coordinate reviews of manufacturers' notifications concerning mercury-added products, applications for phase-down exemptions, collection system plans, disclosures of mercury content, applications for alternative labeling or notification systems, education and outreach activities, and other related functions.

## **MANUFACTURERS' NOTICE TO DEP**

Starting January 1, 2003, the bill requires manufacturers, or their designated industrial trade groups, to provide written notice to DEP or the clearinghouse about their mercury-added products before offering them for sale or distributing them for promotional purposes. Manufacturers include importers and distributors of foreign-made products. Mercury-added products are products, product components, commodities, or chemicals to which mercury has been intentionally added. They do not include packaging, which is covered by existing law. With the commissioner's approval, a manufacturer or its designated trade group can provide information about a product

category rather than an individual product.

The notice must include:

1. the manufacturer's name and address and the position, address, and phone number of its contact person;
2. a brief description of the product or product line;
3. the total amount of mercury in each product; and
4. the product's mercury content within specified ranges.

The mercury content must be identified within the following ranges: less than 5 milligrams (thousandths of a gram); 5 to 10 milligrams; 10 to 50 milligrams; 50 to 100 milligrams; 100 to 1,000 milligrams (one gram); or more than one gram. The manufacturer or its designated industrial trade group must revise this information whenever there is a significant change or at the request of DEP or the regional clearinghouse.

State law on trade secrets applies to public disclosure of information submitted to DEP under the bill. But DEP may provide the clearinghouse with such information and, in consultation with the clearinghouse, may compile or publish analyses or summaries of the information, so long as the documents do not identify the manufacturer or reveal confidential information.

These requirements do not apply to any mercury-added product for which federal law preempts state authority about notice requirements.

## **SALES RESTRICTIONS ON MERCURY-ADDED PRODUCTS- GENERAL PROVISIONS**

### ***Phase-Down of Allowable Mercury Content***

The bill bars anyone from offering for sale or distributing for promotional purposes, mercury-added products with mercury content above the levels specified in the bill. Starting July 1, 2004, the standard is (1) one gram for fabricated products, such as lamps, switches, and measuring devices, and (2) 250 parts per million (ppm) for formulated products, such as cosmetics and pharmaceutical products. Starting July 1, 2006, the standard falls to 100 milligrams (0.1 gram) for fabricated products and 50 ppm for formulated products.

The phase-down limits apply to each component part of a product that contains one or more mercury components, and not the entire product.

### ***Exemptions to Phase-down Limits***

The phase-down does not apply to (1) specialized lighting used in the entertainment industry, such as metal halide lights, and (2) mercury-containing lamps used for backlighting from which the mercury cannot be removed.

By July 1, 2003, the commissioner must convene a working group, including government representatives of other northeastern states, to evaluate advances in technology and to recommend ways to regulate (1) specialized lighting used in the entertainment industry, including metal halide lights, and (2) mercury-added products that have a mercury content between 10 and 100 milligrams or 10 and 50 ppm. The commissioner also must convene a subgroup of this working group, members of which must include representatives of industry trade groups for mercury-containing lamps, to develop a collection plan for such lamps in accordance with the bill's provisions. The working group must complete its recommendations by July 1, 2004. The deadline apparently also applies to the collection plan developed by the subgroup.

In addition, the commissioner must exempt products from these limits if the level of mercury or its compounds is needed to comply with state or federal health or safety requirements. The manufacturer must provide the commissioner with information demonstrating the need for such an exemption. The manufacturer must notify the clearinghouse of its request..

A manufacturer can also ask the commissioner for a modified or conditional exemption for up to four years from the limits on total mercury content for a product or product category. The manufacturer must notify the clearinghouse of its request. The manufacturer must apply for such an exemption (1) at least one year before the limit is to take effect, for existing products or product categories, or (2) before the sale or distribution for promotional purposes of a new product, or category of products. The manufacturer must (1) document the basis for the exemption or renewal, and (2) describe how it will ensure a system exists for the proper collection, transportation and processing of the product once it reaches the end of its useful life.

In determining whether to grant such an exemption, the commissioner must consider whether a system exists to collect, process, and transport the mercury-added product. Such a system must include either provisions for the direct return of a waste product to the manufacturer, or a collection or recycling system supported by an industry, trade group, or similar private or public sector effort. (It is unclear whether the collection system must be in place when the commissioner decides whether to grant the exemption, or if the manufacturer need only ensure such a system will exist either at the time the limit takes effect or when the product reaches the end of its useful life.)

In addition, the commissioner must find the following criteria are met:

1. the product's use benefits the environment, or protects public health or safety;
2. there is no technically feasible alternative to the use of mercury in the product;
3. no comparable, mercury-free product is available at a reasonable cost; and
4. when considering renewal of an exemption, whether the manufacturer has made reasonable efforts to remove mercury from the product.

To assure consistency the commissioner must consult with the clearinghouse and other states, Canadian provinces, and regional governmental organizations before issuing such an exemption. The commissioner may renew a modified or conditional exemption for up to four years if the manufacturer applies for one, and the commissioner finds that it has (1) met the requirements for such an exemption, and (2) complied with all the conditions of the original approval. The commissioner may grant such renewals more than once.

## **RESTRICTIONS ON SPECIFIC PRODUCTS**

### ***Novelties***

The bill bans anyone, as of July 1, 2003, from offering for sale or distributing for promotional purposes, mercury-added novelties. These are products intended mainly for personal or household enjoyment or for adornment, such as toys, games, ornaments, holiday



decorations, apparel, jewelry, figurines, and yard statues or similar products. But, the fact a product contains a removable button battery does not by itself make it a novelty banned by the bill. Novelty manufacturers must notify retailers that sell their products of the ban, and inform them how to properly dispose of their products as hazardous waste according to law.

### ***Thermometers***

The bill bans anyone, as of January 1, 2003, from offering for sale or distributing for promotional purposes, mercury fever thermometers, except under a doctor's prescription. Thermometer manufacturers must give the buyer or recipient a notice of the thermometer's mercury content and instructions on safe handling and proper cleanup if a thermometer breaks. This provision does not apply to digital thermometers that contain a removable button cell battery containing mercury.

### ***Dairy Manometers***

The bill bans, as of July 1, 2003, anyone from offering for sale or distributing for promotional purposes, mercury dairy manometers (devices that measure the pressure on milking lines). Manufacturers must notify retailers about the ban and how to properly dispose of the manometers. The DEP commissioner, in consultation with the agriculture commissioner, must examine the feasibility of implementing a collection and replacement program for these devices, and implement it within available resources.

### ***Mercury Dental Amalgam***

The bill bans, as of July 1, 2003, the use of mercury amalgam by vocational dental education or training schools unless the school has developed and implemented a DEP-approved plan to assure it uses best management practices to prevent improper discharges into state waters, pollution abatement plants or sewage systems, and to properly handle, recycle or dispose of waste elemental mercury and amalgam. Such a plan also must teach students about mercury hazards and best management practices.

## **LABELING**

### ***General Requirements***

Beginning July 1, 2004, mercury-added products described above cannot be offered for sale or distributed for promotional purposes unless they comply with the bill's labeling standards. The standards apply to labeling on the product itself and either its packaging or care-and-use manual. The labeling requirements do not apply to manufacturers of medical equipment not intended for use by non-medical personnel.

If a product contains a removable mercury-added product as a component, both the product and component must be labeled. The product label must identify the mercury-added component so that it may be easily located and removed.

Labels on packaging must be clearly visible before the sale. All required labels must inform the buyer, in words or symbols, that mercury is present in the product and that it should be properly disposed of or recycled according to law. Labels on products must be designed to last for the product's life.

Starting July 1, 2004, anyone offering a mercury-added product for sale by catalog or distributing it for promotional purposes must clearly advise the buyer in writing before the sale that the product contains mercury. (This apparently is meant to refer to distribution for promotional purposes by catalog, because the general notification deadline is January 1, 2003.) Starting July 1, 2004, any person offering mercury-added products for sale by telephone must advise the purchaser before the time of sale that the product contains mercury. These requirement apply to transactions in which the buyer cannot see the label on the package or product before purchasing it.

The product manufacturer is responsible for labeling unless the wholesaler or retailer agrees in writing to take responsibility for implementing an alternative to the labeling requirements as the bill provides.

Retailers will not be found in violation if they are unaware a product contained mercury.

### ***Specific Products***

The manufacturer is generally responsible for meeting the above requirements. But (1) no label is required for button cell batteries; (2) manufacturers of fluorescent lights need only label the product's packaging; (3) no product labeling is required for mercury thermometers (4) vehicle manufacturers must place a label on the vehicle door identifying the vehicle's mercury-added components rather than labeling them individually; (5) manufacturers of products containing a lamp used for backlighting that contains mercury that cannot be removed must place the label on the product or its care-and-use manual; (6) products whose only mercury components are button cell batteries containing mercury do not require a product label, but must meet the requirements by including a label in the product instructions, if any, and on the packaging; and (7) no package labeling is required in the case of large appliances in stores where there are floor models. (Appliances include such items as microwave ovens and portable heaters, as well as refrigerators, washers, dryers and similar items.)

### ***Alternative Compliance***

A manufacturer can apply to the commissioner and the clearinghouse for an alternative way of meeting the labeling standards if (1) compliance with them is not feasible; (2) the proposed alternative would be as effective in providing pre-sale notification of mercury content and instructions on proper disposal; or (3) federal law preempts state authority over labeling. Such approvals are good for up to two years and may be renewed if still eligible under the above requirements, and upon compliance with the conditions of the prior approval. Renewal requests must be submitted 90 days before the prior approval expires. In deciding whether to approve, deny, modify or condition a request for an alternative to the labeling requirements, the commissioner must consult with the states, Canadian provinces and regional governmental organizations to ensure that his label requirements are consistent with those in other jurisdictions. He may revoke an approval for cause. The bill does not state what constitutes cause.

### ***Additional Notice Requirements for Lamps***

Any person who sells mercury-added lamps, regardless of whether they must be labeled or not, to the owner or manager of any industrial, commercial or office building, or to anyone who replaces or

removes from service outdoor lamps containing mercury, must notify the buyer in writing, either on the invoice or in a separate document, that the lamp contains mercury. The notice must also state that mercury is a hazardous substance regulated by federal and state law, and that the lamp must not be disposed of as solid waste. This requirement does not apply to retail establishments that incidentally sell mercury-added lamps. Any person who contracts with the owner or manager of an industrial, commercial or office building, or with a person responsible for outdoor lighting, to remove lamps containing mercury from service, must provide written notice to the person for whom the work is being done that the lamps contain mercury, and of his plans to manage the mercury in the removed lamps. "Manage" apparently refers to the contractor's plans to recycle or dispose of the mercury-added lamps.

## **COLLECTION SYSTEM**

### ***Plan***

The bill bans anyone, beginning July 1, 2003, from offering for sale or distributing for promotional purposes any mercury-added product unless the manufacturer, alone or in concert with others, has submitted a plan to DEP for a system to collect such products. If a mercury-added product is a component of another product, the system must provide for the removal and collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

The collection system must include:

1. an educational component to inform the public about the program's purpose and how to participate in it;
2. a targeted capture rate for the mercury-added components or products;
3. an implementation and financing plan;
4. documentation of the willingness of all of the systems' participants to implement the system;
5. a description of the measures the manufacturer will use and report to demonstrate that the system meets the capture rate;
6. a description of additional or alternative measures that will be used if program targets are not met; and
7. a recycling or disposal plan.

The bill requires the commissioner to review any barriers to the recycling or disposal plan and, if necessary, to amend regulations as appropriate to facilitate collection. (The bill requires the commissioner to review impediments identified pursuant to the recycling or disposal plan, but the plan does not provide for or require any such identification.)

The bill prohibits the state or local governments from paying for the collection system.

By July 1, 2004, and every two years thereafter, the manufacturer or the entity that submitted the collection plan on the manufacturer's behalf must report to the commissioner and the clearinghouse on its effectiveness. The report must include an estimate of the amount of mercury collected, the capture rate for mercury-added products or components, the results of the plan's other performance measures, and such other information as the commissioner requires. The commissioner must make the reports available to the public.

### ***Exemptions***

The bill exempts the following from collection requirements:

1. formulated mercury-added products intended to be consumed in use, such as cosmetics, pharmaceuticals, chemical reagents and other laboratory chemicals;
2. products where mercury is contained in a component that the buyer cannot feasibly remove, such as electronic products containing a mercury-containing lamp used for backlighting, provided its manufacturer or trade association provides information on recycling and safe disposal on the Internet;
3. photographic film and paper;
4. manufacturers or trade associations of mercury-containing lamps whose labeling directs purchasers to a toll-free telephone number and Internet site providing information on recycling and safe disposal; and
5. any other products for which the commissioner determines a collection plan is not feasible.

### **ELEMENTAL MERCURY**

The bill bars anyone from offering for sale or distributing for

promotional purposes elemental mercury without providing the Material Safety Data Sheet (MSDS) prescribed under federal law. Starting July 1, 2003, the seller, distributor, or provider must require the buyer to sign a statement at the time of receipt that the buyer (1) will only use the mercury for medical, research, or manufacturing purposes; and (2) understands that mercury is toxic and (2) will store, use and dispose of it according to federal and state law.

### ***Dental Practitioners***

The bill requires anyone who offers for sale, distributes for promotional purposes, or provides elemental mercury to a dental practitioner to provide a federally-prescribed MSDS. Starting July 1, 2003, such practitioners must (1) use the mercury only for dental purposes, (2) store, use and handle exposure to such mercury according to American Dental Association Guidelines, state and federal law, and any applicable best management practices the state adopts, and (3) dispose of the elemental mercury according to federal and state law.

### **PUBLIC EDUCATION PROGRAM**

The bill allows the commissioner, in consultation with other state agencies, to develop a comprehensive education, outreach, and assistance program for businesses (including manufacturers, waste generators, and others), solid waste management agencies and related entities, recyclers, scrap metal processors, health care facilities, institutions, schools, households, and other interested groups. The program may focus on (1) the hazards of mercury; (2) the responsibilities of manufacturers, agencies and individuals under the bill; and (3) voluntary efforts they can undertake to help reduce mercury in the environment.

The commissioner, in conjunction with manufacturers and other affected businesses, may promote the program's development and implementation. He may cooperate with other states, Canadian provinces, and regional organizations in developing public education, outreach and assistance programs. He may develop an awards program to recognize the accomplishments of those people who exceed the bill's requirements and excel at reducing or eliminating mercury in air emissions or releases.

**BACKGROUND*****Legislative History***

The House referred the bill (File 291) to the Public Health Committee on April 10. The committee reported it favorably on April 17. On April 18, the House referred the bill to the Government, Administration and Elections committee, which reported it favorably on April 19. On April 23, the House referred it to the Appropriations Committee, which reported it favorably on April 24. On April 29, the House referred it to the General Law Committee, which reported it favorably on April 30.

**COMMITTEE ACTION**

## Environment Committee

Joint Favorable Substitute

Yea 25      Nay 3

## Public Health Committee

Joint Favorable Report

Yea 15      Nay 9

## Government Administration and Elections Committee

Joint Favorable Report

Yea 16      Nay 0

## Appropriations Committee

Joint Favorable Report

Yea 44      Nay 3

## General Law Committee

Joint Favorable Report

Yea 25      Nay 0